REMARKS

Applicant expresses appreciation to the Examiner for consideration of the subject patent application. This amendment is in response to the Office Action mailed February 25, 2008. Claims 1-8 were rejected. Claims 9-18 have been withdrawn from consideration as being drawn to an unelected invention. The claims have been amended to address the concerns raised by the Examiner.

Claims 1-18 were originally presented. Original claims 1-8 remain in the application. Claims 9-18 have been canceled without prejudice. Claims 19-25 have been added. No new subject matter has been added.

Election/Restriction Requirement

In response to the Election/Restriction requirement, mailed October 10, 2007, Applicant provisionally elected, without traverse, invention number 1, as identified by the Examiner, the claims readable thereon being claims 1-8. The Applicant affirms this election. Claims 9-18 have been canceled, without prejudice.

Claim Rejections - 35 U.S.C. § 112

Claims 1-8 stand rejected under § 112, first paragraph, as based on disclosure which is not enabling. Specifically, the Examiner asserted that the application contains "insufficient support for the claimed feature of 'providing a publicly-owned, high-capacity communications network'" and that "it is unclear from the specification how the network is created or initialized."

The Applicant respectfully submits that the specification does contain sufficient support for the claimed features. The present invention combines the processes of government contracting for creation of public infrastructure, with the process of installation of a high-capacity communications network, in a novel way. In discussing the provision of a "publicly-owned, high-capacity communications network" the specification states:

> The first step toward this goal [of providing a publicly-owned, high-capacity communications network] involves contracting, by a governmental organization, to construct a high-capacity fiber optic communication network (step40) within an area

served by the governmental organization. For example, a city or county government would construct the communications network as a part of the publicly-owned infrastructure of the area, in the same way the local culinary water distribution system is provided. Page 8, ln. 25-30.

The specification and claims as originally presented note that the relevant governmental entity can be a city, county, state, or national government, or a "specially created district." Page 6 ln. 29-30; see also original claim 5. The Applicant respectfully submits that the basic process of constructing and initializing communications networks is well known by those of skill in the art. Communications networks comprising buried cable, overhead wires, satellite transmitters/receivers, etc. are continually being installed throughout the world.

Additionally, the process of providing public infrastructure by governmental entities is well known. The specification notes that the communications network can be provided by a governmental entity "in the same way the local culinary water distribution system is provided." Page 8 ln. 30. "The governmental entity then freely allows connection of the communications network to providers of communications services (step 44) and to end users (step 46) of those services." Page 8 ln. 33 – p. 9 ln. 1. Infrastructure systems such as water, sewer, etc. are commonly provided by governmental organizations in this way. Consequently, the Applicant submits that the language "providing a publicly-owned, high-capacity communications network" is sufficiently clear to enable one of skill in the art to practice the invention.

As an alternative to the language of claim 1, the Applicant has added new claim 19, which presents the same subject matter as original claim 1, but in alternative language. This claim recites the element of "constructing a high-capacity communications network as a component of publicly-owned infrastructure." This language is supported by the original specification at least at page 8, lines 25-30. The Applicant submits that this claim language is fully enabled by the original specification for the reasons given above.

For all of the above reasons, the Applicant submits that the disclosure is sufficient to enable one of skill in the art to practice the invention, as required by 35 U.S.C. § 112, first paragraph, and requests that the Examiner withdraw the rejection.

Claims 5-8 stand rejected under § 112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has asserted that the term "governmental entity" as used in claim 5 is "vague and indefinite since the term 'entity' is non-limiting."

The Applicant submits that the term "governmental entity" is clear and definite, and has a well understood meaning. The Applicant submits that this language is appropriately limiting because it limits the entity to a governmental entity, rather than a private entity (e.g. a business corporation). Moreover, the term "governmental entity" is widely used in state and Federal statutes, including current U.S. patent statutes and regulations. For example, 35 U.S.C. § 296 (a) discusses government liability for patent infringement, and uses the terms "governmental and nongovernmental entit[ies]" without any additional definition, indicating that the meaning of these terms is well understood. Similarly, the patent rules contained in title 37 of the Code of Federal Regulations use the term "Governmental entity." See 37 CFR § 11.2. Notably, this term is used in a "Definitions" section of the Patent Rules, demonstrating that this term is considered to have a definite enough meaning that it can be used to define other terms, and does not require its own separate definition. This term appears elsewhere in other Federal statutes also.

The Applicant submits that, where Federal law uses a term in its statutes and regulations without including a specific definition, and uses that term to define other terms, that is prima facie evidence that the Federal Government, of which the U.S. Patent and Trademark Office is a part, recognizes that term as being clear and definite, and having understood limits of meaning. Accordingly, the Applicant submits that this term is definite and distinct, and that claims 5-8 fulfill the definiteness requirement of 35 U.S.C. § 112, 2nd paragraph, and requests that the Examiner withdraw this rejection.

As an alternative to the language of claim 5, the applicant has also added new claim 23, which presents the same subject matter using the language "within a geographic region governed by a governmental organization selected from the group consisting of a city government, a county government, a special district, a state government, and a national government". This language is supported by the original specification, which uses the term "governmental organization" at page 8, lines 25-30, and lists city, county, state, federal, and special districts as relevant governmental organizations. The Applicant submits that this language is clear and definite for the reasons

given above, and it is appropriately limiting because it limits the entity to a governmental organization, rather than a private organization (e.g. a business corporation). The Applicant thus respectfully requests that the rejections under 35 U.S.C. § 112, 2nd paragraph be withdrawn.

Claim Rejections - 35 U.S.C. § 103

Claims 1-8 (including independent claim 1) were rejected under 35 U.S.C. § 103 as being unpatentable over Schweitzer et al. (US 6,418,467) in view of Official Notice.

As noted above, the present invention combines the processes of government contracting for creation of public infrastructure, with the process of installation of a high-capacity communications network, in a novel and non-obvious way. The Examiner has asserted that Schweitzer teaches "providing a publicly-owned, high-capacity communications network," but the Applicant is unable to find any teaching or suggestion of such in the Schweitzer reference. The Examiner appears to cite column 2 lines 19-52 in support of this assertion, but there is no discussion of public ownership of a communications network in this portion or any other portion of the reference that the Applicant has been able to find. Indeed, the issue of constructing or funding a communications network does not appear to be considered in the Schweitzer reference at all.

The Examiner has taken Official Notice that "without regard to the type or content of the data transmitted" is "common and well known in prior art in reference to network protocols", but this element does not relate to public creation of a communications network, and therefore does not supply the deficiency of Schweitzer. For these reasons, the Applicant submits that claim 1 is not obvious over the Schweitzer reference in view of Official Notice, and should be allowed. The Applicant further submits that claims 2-8 are allowable as being dependent upon an allowable base claim, and that new claims 19-25 are allowable for the same reasons. The Applicant therefore urges the Examiner to withdraw the rejections.

CONCLUSION

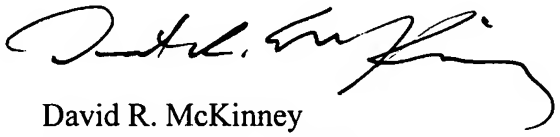
In light of the above, Applicant respectfully submits that pending claims 1-8 and 19-25 are now in condition for allowance. Therefore, Applicant requests that the rejections and objections be withdrawn, and that the claims be allowed and passed to issue. If any impediment

to the allowance of these claims remains after entry of this Amendment, the Examiner is strongly encouraged to call David R. McKinney at (801) 748-1450 so that such matters may be resolved as expeditiously as possible.

Check No. 1679, in the amount of $120.00, is enclosed pursuant to 37 C.F.R. § 1.17(a)(1), for a one (1) month extension of time pursuant to 37 C.F.R. § 1.136. Seven (7) claims were added (claims 19-25), including 1 independent claim (claim 19), while 10 claims were canceled (claims 9-18), including 2 independent claims (claims 9 and 15). Therefore, no additional fee is due.

DATED this 25th day of June, 2008.

Respectfully submitted,



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